

RESOLUTION C-2014-19 **DOCKET**

INTRODUCING: Robinson
COMMITTEE: Finance

**A Resolution of the Common Council of the City of Evansville Confirming
the Declaration of an Economic Revitalization Area for Property Tax Phase-In
for Redevelopment/Rehabilitation of Real Property**

**New Odyssey Investments, LLC/D-Patrick, Inc.
(1100 E. Walnut St. Evansville, IN.)**

WHEREAS, New Odyssey Investments, LLC/D-Patrick, Inc. (the "Applicant") has made application for Economic Revitalization Area designation, pursuant to IC 6-1.1-12.1 et seq and Evansville Common Council Resolution C-2014-16 As Amended (the "Tax Phase-In Resolution"), for the property located at: See Section 1; and

WHEREAS, heretofore under provisions of Resolution C-2014-16, the Common Council of the City of Evansville found the above-described property to meet the requirements of an Economic Revitalization Area pursuant to IC 6-1.1-12.1 et seq and declared said property to be an Economic Revitalization Area; and

WHEREAS, notice of the adoption and substance of the above mentioned resolution has been published in accordance with IC 5-3-1 and the Common Council of the City of Evansville has conducted a public hearing as of the date hereof to determine whether the qualifications for an economic revitalization area have been met; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Evansville as follows:

Section 1. The property known as 1100 E. Walnut St. Evansville, IN. and more particularly described as follows:

82-06-28-011-008.001-027; 82-06-28-011-008.002-027; 82-06-28-011-008.003-027;
82-06-28-011-008.004-027; 82-06-28-011-008.005-027; 82-06-28-011-008.006-027;
82-06-28-011-008.007-027; 82-06-28-011-008.008-027; 82-06-28-011-008.009-027;
82-06-28-011-008.010-027; 82-06-28-011-008.011-027; 82-06-28-011-008.012-027;
82-06-28-011-008.013-027; 82-06-28-011-008.014-027; 82-06-28-011-008.015-027;
82-06-28-011-008.016-027; 82-06-28-011-008.019-027; 82-06-28-011-008.025-027;
82-06-28-011-008.026-027; 82-06-28-011-008.027-027; 82-06-28-011-008.028-027;
82-06-28-011-008.029-027; 82-06-28-011-008.030-027; 82-06-28-011-008.031-027;
82-06-28-011-008.033-027; 82-06-28-011-016.026-027; 82-06-28-011-016.025-027;
82-06-28-011-016.024-027; 82-06-28-011-016.023-027; 82-06-28-011-016.022-027;
82-06-28-011-016.021-027; 82-06-28-011-016.020-027; 82-06-28-011-016.019-027;
82-06-28-011-016.018-027; 82-06-28-011-016.015-027; 82-06-28-011-008.017-027;
82-06-28-011-008.018-027; 82-06-28-011-008.037-027; 82-06-28-011-008.036-027;
82-06-28-011-008.035-027; 82-06-28-011-008.034-027; 82-06-28-011-016.017-027;
82-06-28-011-016.016-027; 82-06-28-011-016.014-027

have been found to meet the qualifications for an economic revitalization area as outlined in IC 6-1.1-12.1.

FILED

JUL 23 2014

Anna Widner
CITY CLERK

Section 2. Resolution **C-2014-16** adopted by the Common Council on July 14, 2014, is hereby confirmed.

Section 3. The Statement of Benefits submitted by and dated June 10, 2014, is hereby approved.

Section 4. This Resolution shall be in full force and effect from and after its passage by the Common Council, signing by the Mayor, and advertisement, if any, as required by law.

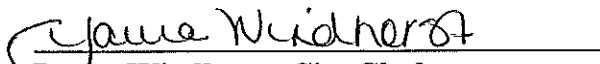
PASSED BY the Common Council of the City of Evansville, Indiana, on the 28 day of July, 2014, on said day signed by the President of the Common Council and attested by the City Clerk.



President of the Common Council, John Friend

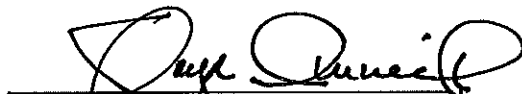
ATTEST: Laura Windhorst
Laura Windhorst, City Clerk

Presented by me, the undersigned City Clerk of the City of Evansville, Indiana, to the Mayor of said city, this 29 day of July, 2014, for his consideration and action thereon.



Laura Windhorst, City Clerk
City of Evansville, Indiana

Having examined the foregoing resolution, I do now, as Mayor of the City of Evansville, Indiana, approve said resolution and return the same to the City Clerk this 30th day of July, 2014.



Lloyd Winnedge, Mayor
City of Evansville, Indiana

APPROVED AS TO FORM
BY TED ZIEMER, CORPORATION COUNSEL

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") dated as of the _____ day of _____, 2014, serves as confirmation of the commitments of **New Odyssey Investments, LLC and D-Patrick, Inc.** (the "Applicant"), pending a public hearing on July 28, 2014 before the Evansville City Council, to comply with the project description contained in its Application for Economic Revitalization Area Designation and Phase-In of Property Tax on Real Property Construction, an Economic Development Incentive offered by the City of Evansville for said property improvements, Statement of Benefits, the Preliminary Economic Revitalization Area Resolution No. C-2014-16 adopted by the Evansville City Council (the "ECC") on July 14, 2014, the Resolution in Support of Economic Development Incentives No. C-2014-19 adopted by the ECC on July 28, 2014 and this Agreement (the "Commitments").

Subject to the adoption of the Final Economic Revitalization Area Resolution by the ECC, the City of Evansville, Indiana (the "City") commits to providing ten (10) years Real Property Tax Phase-In for the Applicant's construction of real property at its planned facility at the site bounded by East Walnut Street, Sycamore Street, South New Your Avenue, and Highway 41, Evansville, Indiana (the "Project"), more specifically designated by the addresses and parcel identification numbers in Appendix I to this MOU. During the ten (10) year phase-in period, the City may annually request information from the Applicant concerning the nature of the Project. The City shall utilize this information and the information required to be filed by the Applicant in the CF-1 Compliance with the Statement of Benefits form (the "CF-1 Form") to verify that the Applicant has complied with its obligations as contained in the Commitments at all times after the Commitment Date and for the duration of the Phase-In. The Applicant further agrees to provide the City with such additional information reasonably

requested by the City related to the information provided in the CF-1 Form within a reasonable time following any such additional written request. If at any time during the term of this Agreement, the Applicant fails to submit the required CF-1 Form within a reasonable time following the City's written request, the City may terminate the subject Economic Revitalization Area Designation and/or require the applicant to pay damages equal to the amount of tax phase-in savings of the Applicant received during the year of non-submittal; provided, that Applicant shall have thirty (30) days following receipt of written notice from the City of such failure to cure any such failure.

The City, reserves the right to terminate the Economic Revitalization Area Designation and associated property tax phase-in deductions if: (1) Applicant fails or refuses to provide information requested in the CF-1 Form, subject to the cure period described above; or (2) the City reasonably determines that the Applicant has not substantially complied with all of the Commitments, and that the Applicant's failure to substantially comply with the Commitments was not due to factors beyond its control. As used in this Agreement, factors beyond the control of the Applicant shall only include factors not reasonably foreseeable at the time of the Application and submission of Statement of Benefits and which are not caused by any intentional act or omission of the Applicant and which materially and adversely affect the ability of the Applicant to substantially comply with the Commitments.

If at any time during the term of this Agreement, the Applicant shall: (i) cease operations at the facility for which the tax phase-in was granted for the purpose of moving operations and related jobs to another community not within the City; or (ii) announce the cessation of operations at such facility, for the purpose of moving operations and related jobs to another community not within the City, then the City may immediately terminate the Economic Revitalization Area Designation and associated tax phase-in deductions, and upon such

termination, require Applicant to pay liquidated damages equal to the amount of all the savings received through the date of such termination. The parties agree and stipulate that this liquidated damages clause is a reasonable pre-estimate of probable, actual damages sustained by the City and not a penalty, and the Applicant waives any right to challenge this provision as an unenforceable penalty. In determining the amount of the savings that the City may require the Applicant to pay as liquidated damages as described in this paragraph, the City shall use its best efforts to determine and take into consideration, as an offset to such liquidated damages, the benefit received by the City as a result, and to the extent, of the Applicant's compliance with its obligations contained in the Commitments through the date of such termination. For example, if in the unlikely event that the Applicant ceases operations at the facility at the end of year 7 and the City determines that the Applicant received 10% more in tax savings than the benefits the City estimates it received by virtue of the Applicant having complied with Commitments until such date, then the liquidated damages the Applicant may have to pay would be equal to such 10%.

In the event that the City determines, in accordance with the terms hereof, that the Economic Revitalization Area Designation and associated tax phase-in deductions should be terminated or that liquidated damages equal to the amount determined above should be paid, it will give the Applicant written notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the City's designated representatives to show cause why the phase-in should not be terminated and/or the liquidated damages be paid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have thirty (30) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the phase-in termination and/or liquidated damages payment should

not occur. If, after giving such notice and receiving such evidence, if any, the City determines that the phase-in termination action is proper, the Applicant shall be provided with written notice and Applicant shall be entitled to present its case at a hearing before the ECC before any final action shall be taken terminating the phase-in. If the ECC adopts a resolution terminating the tax phase-in, the Applicant shall be entitled to appeal that determination to a Vanderburgh County Superior or Circuit Court.

In the event the City requires liquidated damages to be paid as provided hereunder, it shall provide Applicant with a written statement calculating the amount due (the "Statement"), and Applicant shall make such payment to the City within thirty (30) days after the later of (i) the date the Statement is received by the Applicant and (ii) the date of the final, non-appealable determination the Applicant is obligated to make such payment to the City. If the Applicant does not make timely payment, the City shall be entitled to all reasonable costs and attorneys fees incurred in the enforcement and collection of the liquidated damages required to be repaid hereunder.

In the event, the This Agreement contains the entire understanding between the City and the Applicant with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the City and the Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the phase-in are solely the responsibility of the Applicant.

Neither the failure nor any delay on the part of either party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further

exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana.

The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Vanderburgh County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instruments delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand or by facsimile (with confirmation by registered or certified mail) or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

If to the City:

City of Evansville

306 Civic Center Complex
One N.W. Martin Luther King, Jr. Blvd.
Evansville, Indiana 47708

This Agreement shall be binding upon and inure to the benefit of the City and the Applicant and their successors and assigns, except that no party may assign or transfer its rights

or obligations under this Agreement without the prior written consent of the other party hereto, in which consent shall not be unreasonably be withheld.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. By executing this Agreement, each person so executing affirms that he has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of the party.

The provisions of this Agreement and of each section or other subdivision herein are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

No official, director, officer, employee or agent of the City shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

No director, officer, employee or agent of the Applicant shall be charged personally by the City, its officials, employees or agents with any liabilities or expenses of defense or be held personally liable to the City under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
and year first above written.

“Applicant”

and its Subsidiaries

By: _____, _____

Approved as to legal form
and adequacy this _____
day of _____, 2014.

Ted C. Ziemer, Jr.
Corporation Counsel

“City”

City of Evansville

By: Lloyd Winnecke, Mayor

Attachment I

Addresses and Parcel IDs Comprising the Site for the Planned Project

1	200 S. New York Ave.	AUBURN 40FT L 1 BL 4 & PTS VAC SYCAMORE ST	09-010-11-008-001
2	202 S. New York Ave.	AUBURN S 10FT L 1 & 22FT L 2 BL 4	09-010-11-008-002
3	208 S. New York Ave.	AUBURN 28FT L 2 BL 4	09-010-11-008-003
4	210 S. New York Ave.	AUBURN 35FT L 3 BL 4	09-010-11-008-004
5	212 S. New York Ave.	AUBURN S 15FT L 3 & N 10FT L 4 BL 4	09-010-11-008-005
6	214 S. New York Ave.	AUBURN PT L 4 BL 4	09-010-11-008-006
7	216 S. New York Ave.	AUBURN PT L 4 L 5 BL 4	09-010-11-008-007
8	218 S. New York Ave.	AUBURN S 32 1/2FT L 5 BL 4	09-010-11-008-008
9	220 S. New York Ave.	AUBURN N 30FT L 6 BL 4	09-010-11-008-009
10	222 S. New York Ave.	AUBURN S 20FT L 6 & ADJ N 15FT L 7 BL 4	09-010-11-008-010
11	224 S. New York Ave.	AUBURN PT L 7 BL 4	09-010-11-008-011
12	300 S. New York Ave.	AUBURN PT L 8 BL 4	09-010-11-008-012
13	302 S. New York Ave.	AUBURN PT L 8 PT L 9 BL 4	09-010-11-008-013
14	306 S. New York Ave.	AUBURN PT L 9 BL 4	09-010-11-008-014
15	308 S. New York Ave.	AUBURN L 10 BL 4	09-010-11-008-015
16	312 S. New York Ave.	AUBURN L 11 BL 4	09-010-11-008-016
17	201-211 S. Kerth Ave.	AUBURN N L 1 THRU 5 & 1.8FT L 6 BL 15 & PT VAC SYCAMORE ST	09-010-11-008-019
18	213 S. Kerth Ave.	AUBURN PT L 6 BL 15	09-010-11-008-025
19	215 S. Kerth Ave.	AUBURN PT L 6 & PT L 7 BL 15	09-010-11-008-026
20	217 S. Kerth Ave.	AUBURN PT L 7 & PT L 8 BL 15	09-010-11-008-027
21	219 S. Kerth Ave.	AUBURN 7.1FT L 8 & 27 1/2FT L 9 BL 15	09-010-11-008-028
22	301 S. Kerth Ave.	AUBURN 10 FT LOT 9 & 20 FT LOT 10 BLK 15	09-010-11-008-029
23	305 S. Kerth Ave.	AUBURN PT L 10 & PT L 11 BL 15	09-010-11-008-030
24	307 S. Kerth Ave.	AUBURN PT L 11 & PT L 12 BL 15	09-010-11-008-031
25	311 S. Kerth Ave.	AUBURN PT L 12 L 13 BL 15	09-010-11-008-033
26	218 S. Kerth Ave.	AUBURN L 7 & PT L 8 SUB OF OUTLOT 2 BL 16	09-010-11-016-026
27	220 S. Kerth Ave.	AUBURN L 6 SUB OF OUTLOT 2 BL 16	09-010-11-016-025
28	300 S. Kerth Ave.	AUBURN L 5 SUB OF OUTLOT 2 BL 16	09-010-11-016-024
29	302 S. Kerth Ave.	AUBURN L 4 SUB OF OUTLOT 2 BL 16	09-010-11-016-023
30	304 S. Kerth Ave.	AUBURN L 3 SUB OF OUTLOT 2 BL 16	09-010-11-016-022
31	306 S. Kerth Ave.	AUBURN L 2 SUB OF OUTLOT 2 BL 16	09-010-11-016-021
32	308 S. Kerth Ave.	AUBURN L 1 AUGUST F GEHLHAUSENS OF OUTLOT 2 BL 16	09-010-11-016-020
33	310 S. Kerth Ave.	AUBURN L 20 BL 16	09-010-11-016-019
34	314 S. Kerth Ave.	AUBURN L 19 BL 16	09-010-11-016-018
35	1154 E. Walnut St.	AUBURN PT L 15 & PT L 16 BL 16	09-010-11-016-015
36	309 S. Kerth Ave.	AUBURN 30FT L 12 BL 15	09-010-11-009-032
37	316 S. New York Ave.	AUBURN PT L 12 BL 4	09-010-11-008-017
38	1100 E. Walnut St.	AUBURN PT L 12 BL 4	09-010-11-008-018
39	1116 E. Walnut St.	AUBURN L 18 & 7.75FT L 17 BL 15	09-010-11-008-037
40	1118 E. Walnut St.	AUBURN 11 1/2FT L 16 & ADJ 18 1/2FT L 17 BL 15	09-010-11-008-036
41	1120 E. Walnut St.	AUBURN 19 1/2 FT L 15 & PT L 16 BL 15	09-010-11-008-035
42	1122 E. Walnut St.	AUBURN PT L 15 & PT L 14 BL 15	09-010-11-008-034
43	1150 E. Walnut St.	AUBURN L 18 & ADJ 6.55 FT L 17 BL 16	09-010-11-016-017
44	1152 E. Walnut St.	AUBURN PT L 17 & PT L 16 BL 16	09-010-11-016-016
45	1156 E. Walnut St.	AUBURN L 14 & PT L 15 BL 16	09-010-11-016-014



July 23, 2014

To: The Common Council of the City of Evansville

Re: **Economic Development Target Area and Designation for Revitalization**
New Odyssey Investments, LLC / D-Patrick, Inc.

Honorable Council Members;

With Common Council approval of Ordinance G-2014-13 designating an Economic Target Area, and approval of Preliminary Resolution C-2014-16 designating an Economic Revitalization Area for Tax Phase-In; we are submitting the attached **Confirming Resolution designating the Economic Revitalization Area for your approval.**

We would appreciate Council approval to hold all three readings of this resolution at the July 28, 2014 Common Council meeting. This will support the aggressive schedule for D-Patrick to construct a new facility and vacate the existing property in time for construction of the IU Medical School.

Also attached please find a Memorandum of Agreement to be executed that will allow Council the option of "claw back" on abated taxes if D-Patrick should close down operations for the purpose of moving to a location outside the City of Evansville within the abatement period. This is the same agreement submitted for consideration on prior projects.

If there is any information you require for decision-making that is not contained herein, please let me know.

Sincerely,

Deborah D. Dewey
President, Growth Alliance for Greater Evansville, Inc.

FILED

JUL 23 2014

Anna W. Winkler
CITY CLERK